



# STATE OF INDIANA

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March 8, 2012

Mr. Jonathan Farley Washington  
P.O. Box 999  
Pinckneyville, Illinois 62274

*Re: Formal Complaint 12-FC-39; Alleged Violation of the Access to Public Records Act by the East Chicago Board of Public Safety*

Dear Mr. Washington:

This advisory opinion is in response to your formal complaint alleging the East Chicago Board of Public Safety ("Board") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Board. As of today's date we have yet to receive a response.

## BACKGROUND

In your formal complaint, you allege that you have submitted a written request to the Board on January 10, 2012 for a copy of all excessive complaints received by the East Chicago Police Department from January 1, 2000 through January 15, 2012. As of February 8, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Board has not responded to your request in any fashion.

## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* I.C. § 5-14-3-1. The Board is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Board's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt,

the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, it is my opinion that if the Board failed to respond to your written request within seven (7) days of its receipt it violated the APRA.

Without the benefit of a response from the Board, it is unclear to me why your request was denied. The records you requested may very well be confidential or otherwise nondisclosable. However, under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1.

Because the Board has not provided a justification for withholding the records at issue here, it is my opinion that the Board has failed to sustain its burden. If the Board cannot justify withholding the records under the APRA, I encourage the Board to release the records to you. To the extent the Board persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Board is in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

#### CONCLUSION

Based on the foregoing, it is my opinion that if the Board failed to respond to your written request within seven (7) days of its receipt, it violated the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "Joe Hoage". The signature is stylized with a large initial "J" and "H".

Joseph B. Hoage  
Public Access Counselor

cc: East Chicago Board of Public Safety